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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

Plaintiff KEITH HOBBS (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

## **NATURE OF THE CASE**

1. Plaintiff brings this action individually and on behalf of all others

1 similarly situated seeking damages and any other available legal or equitable  
 2 remedies resulting from the illegal actions of Defendant, MEDICAL GUARDIAN  
 3 LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff  
 4 on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection  
 5 Act, *47. U.S.C. § 227 et seq.* (“TCPA”) and related regulations, specifically the  
 6 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

7 **JURISDICTION & VENUE**

8 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,  
 9 a Georgia resident, seeks relief on behalf of a Class, which will result in at least  
 10 one class member belonging to a different state than that of Defendant, a  
 11 Pennsylvania company. Plaintiff also seeks up to \$1,500.00 in damages for each  
 12 call in violation of the TCPA, which, when aggregated among a proposed class in  
 13 the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
 14 Therefore, both diversity jurisdiction and the damages threshold under the Class  
 15 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

16 3. Venue is proper in the United States District Court for the Eastern  
 17 District of Pennsylvania pursuant to *28 U.S.C. § 1331(b)(1)* because Defendant  
 18 resides in this District.

19 **PARTIES**

20 4. Plaintiff, KEITH HOBBS (“Plaintiff”), is a natural person, and is a  
 21 “person” as defined by *47 U.S.C. § 153 (39)*.

22 5. Defendant, MEDICAL GUARDIAN LLC (“Defendant”), is an entity  
 23 in the business of giving medical alerts, and is a “person” as defined by *47 U.S.C.*  
 24 *§ 153 (39)*.

25 6. The above named Defendant, and its subsidiaries and agents, are  
 26 collectively referred to as “Defendants.” The true names and capacities of the  
 27 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
 28 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious

1 names. Each of the Defendants designated herein as a DOE is legally responsible  
2 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
3 Complaint to reflect the true names and capacities of the DOE Defendants when  
4 such identities become known.

5       7. Plaintiff is informed and believes that at all relevant times, each and  
6 every Defendant was acting as an agent and/or employee of each of the other  
7 Defendants and was acting within the course and scope of said agency and/or  
8 employment with the full knowledge and consent of each of the other Defendants.  
9 Plaintiff is informed and believes that each of the acts and/or omissions complained  
10 of herein was made known to, and ratified by, each of the other Defendants.

#### FACTUAL ALLEGATIONS

12       8. Beginning on or about June 13, 2017 and continuing through on or  
13 about July 20, 2017, Defendant contacted Plaintiff on Plaintiff's cellular telephone  
14 number ending in -7558 in an attempt to solicit Plaintiff to purchase Defendant's  
15 services or products.

16       9. Defendant used an "automatic telephone dialing system" as defined  
17 by *47 U.S.C. § 227(a)(1)* to place its calls to Plaintiff seeking to solicit its services.

18       10. Defendant contacted or attempted to contact Plaintiff from telephone  
19 numbers belonging to Defendant, including without limitation (561) 220-9418.

20       11. Defendant's calls constituted calls that were not for emergency  
21 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

22       12. Defendant's calls were placed to a telephone number assigned to a  
23 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
24 pursuant to *47 U.S.C. § 227(b)(1)*.

25       13. During all relevant times, Defendant did not possess Plaintiff's "prior  
26 express consent" to receive calls using an automatic telephone dialing system or an  
27 artificial or prerecorded voice on its cellular telephones pursuant to *47 U.S.C. §*  
28 *227(b)(1)(A)*.

14. Furthermore, Plaintiff's cellular telephone number ending in -7558 has been on the National Do-Not-Call Registry since at least on or about March 23, 2017, or in any case, well over thirty (30) days prior to Defendant's initial calls.

15. Defendant placed multiple calls soliciting its business to Plaintiff on its cellular telephones beginning in or around June of 2017 and continued until in or around July of 2017.

16. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

17. Plaintiff received numerous solicitation calls from Defendant within a 12-month period.

18. Plaintiff requested for Defendant to stop calling Plaintiff during one of the initial calls from Defendant, thus revoking any prior express consent that had existed and terminating any established business relationship that had existed, as defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

19. Despite this, Defendant continued to call Plaintiff in an attempt to solicit its services and in violation of the National Do-Not-Call provisions of the TCPA.

20. Upon information and belief, and based on Plaintiff's experiences of being called by Defendant after requesting they stop calling, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

## **CLASS ALLEGATIONS**

21. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

1 All persons within the United States who received any  
2 solicitation/telemarketing telephone calls from  
3 Defendant to said person's cellular telephone made  
4 through the use of any automatic telephone dialing  
5 system or an artificial or prerecorded voice and such  
6 person had not previously consented to receiving such  
7 calls within the four years prior to the filing of this  
8 Complaint

9  
10 22. The class concerning the ATDS claim for revocation of consent, to the  
11 extent prior consent existed (hereafter "The ATDS Revocation Class") is defined  
12 as follows:

13 All persons within the United States who received any  
14 solicitation/telemarketing telephone calls from  
15 Defendant to said person's cellular telephone made  
16 through the use of any automatic telephone dialing  
17 system or an artificial or prerecorded voice and such  
18 person had revoked any prior express consent to receive  
19 such calls prior to the calls within the four years prior to  
20 the filing of this Complaint.

21 23. The class concerning the National Do-Not-Call violation (hereafter  
22 "The DNC Class") is defined as follows:

23 All persons within the United States registered on the  
24 National Do-Not-Call Registry for at least 30 days, who  
25 had not granted Defendant prior express consent nor had  
26 a prior established business relationship, who received  
27 more than one call made by or on behalf of Defendant  
28 that promoted Defendant's products or services, within  
any twelve-month period, within four years prior to the  
filing of the complaint.

29 24. The class concerning the National Do-Not-Call violation following  
30 revocation of consent and prior business relationship, to the extent they existed  
31 (hereafter "The DNC Revocation Class") is defined as follows:

1                   All persons within the United States registered on the  
2                   National Do-Not-Call Registry for at least 30 days, who  
3                   received more than one call made by or on behalf of  
4                   Defendant that promoted Defendant's products or  
5                   services, after having revoked consent and any prior  
6                   established business relationship, within any twelve-  
7                   month period, within four years prior to the filing of the  
8                   complaint.

9                   25. Plaintiff represents, and is a member of, The ATDS Class, consisting  
10                  of all persons within the United States who received any solicitation telephone calls  
11                  from Defendant to said person's cellular telephone made through the use of any  
12                  automatic telephone dialing system or an artificial or prerecorded voice and such  
13                  person had not previously not provided their cellular telephone number to  
14                  Defendant within the four years prior to the filing of this Complaint.

15                  26. Plaintiff represents, and is a member of, The ATDS Revocation Class,  
16                  consisting of all persons within the United States who received any  
17                  solicitation/telemarketing telephone calls from Defendant to said person's cellular  
18                  telephone made through the use of any automatic telephone dialing system or an  
19                  artificial or prerecorded voice and such person had revoked any prior express  
20                  consent to receive such calls prior to the calls within the four years prior to the  
21                  filing of this Complaint.

22                  27. Plaintiff represents, and is a member of, The DNC Class, consisting  
23                  of all persons within the United States registered on the National Do-Not-Call  
24                  Registry for at least 30 days, who had not granted Defendant prior express consent  
25                  nor had a prior established business relationship, who received more than one call  
26                  made by or on behalf of Defendant that promoted Defendant's products or services,  
27                  within any twelve-month period, within four years prior to the filing of the  
28                  complaint.

29                  28. Plaintiff represents, and is a member of, The DNC Revocation Class,

1 consisting of all persons within the United States registered on the National Do-  
2 Not-Call Registry for at least 30 days, who received more than one call made by or  
3 on behalf of Defendant that promoted Defendant's products or services, after  
4 having revoked consent and any prior established business relationship, within any  
5 twelve-month period, within four years prior to the filing of the complaint.

6 29. Defendant, their employees and agents are excluded from The  
7 Classes. Plaintiff does not know the number of members in The Classes, but  
8 believes the Classes members number in the thousands, if not more. Thus, this  
9 matter should be certified as a Class Action to assist in the expeditious litigation of  
10 the matter.

11 30. The Classes are so numerous that the individual joinder of all of its  
12 members is impractical. While the exact number and identities of The Classes  
13 members are unknown to Plaintiff at this time and can only be ascertained through  
14 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
15 The Classes includes thousands of members. Plaintiff alleges that The Classes  
16 members may be ascertained by the records maintained by Defendant.

17 31. Plaintiff and members of The ATDS Class and The ATDS Revocation  
18 Class were harmed by the acts of Defendant in at least the following ways:  
19 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular  
20 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class  
21 members to incur certain charges or reduced telephone time for which Plaintiff and  
22 ATDS Class and ATDS Revocation Class members had previously paid by having  
23 to retrieve or administer messages left by Defendant during those illegal calls, and  
24 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class  
25 members.

26 32. Common questions of fact and law exist as to all members of The  
27 ATDS Class which predominate over any questions affecting only individual  
28 members of The ATDS Class. These common legal and factual questions, which

1 do not vary between ATDS Class members, and which may be determined without  
2 reference to the individual circumstances of any ATDS Class members, include,  
3 but are not limited to, the following:

- 4 a. Whether, within the four years prior to the filing of this  
5 Complaint, Defendant made any telemarketing/solicitation call  
6 (other than a call made for emergency purposes or made with  
7 the prior express consent of the called party) to a ATDS Class  
8 member using any automatic telephone dialing system or any  
9 artificial or prerecorded voice to any telephone number  
10 assigned to a cellular telephone service;
- 11 b. Whether Plaintiff and the ATDS Class members were damaged  
12 thereby, and the extent of damages for such violation; and
- 13 c. Whether Defendant and their agents should be enjoined from  
14 engaging in such conduct in the future.

15 33. As a person that received numerous telemarketing/solicitation calls  
16 from Defendant using an automatic telephone dialing system or an artificial or  
17 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
18 claims that are typical of The ATDS Class.

19 34. Common questions of fact and law exist as to all members of The  
20 ATDS Revocation Class which predominate over any questions affecting only  
21 individual members of The ATDS Revocation Class. These common legal and  
22 factual questions, which do not vary between ATDS Revocation Class members,  
23 and which may be determined without reference to the individual circumstances of  
24 any ATDS Revocation Class members, include, but are not limited to, the  
25 following:

- 26 a. Whether, within the four years prior to the filing of this  
27 Complaint, Defendant made any telemarketing/solicitation call  
28 (other than a call made for emergency purposes or made with

the prior express consent of the called party) to an ATDS Revocation Class member, who had revoked any prior express consent to be called using an ATDS, using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;

- b. Whether Plaintiff and the ATDS Revocation Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

35. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff is asserting claims that are typical of The ATDS Revocation Class.

36. Plaintiff and members of The DNC Class and DNC Revocation Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class and DNC Revocation Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class and DNC Revocation Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class and DNC Revocation Class members were damaged thereby.

37. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Class. These common legal and factual questions, which do not vary between DNC Class members, and which may be determined without reference to the individual circumstances of any DNC Class members, include, but are not limited to, the following:

- 1 a. Whether, within the four years prior to the filing of this  
2 Complaint, Defendant or its agents placed more than one  
3 solicitation call to the members of the DNC Class whose  
4 telephone numbers were on the National Do-Not-Call Registry  
5 and who had not granted prior express consent to Defendant and  
6 did not have an established business relationship with  
7 Defendant;
- 8 b. Whether Defendant obtained prior express written consent to  
9 place solicitation calls to Plaintiff or the DNC Class members'  
10 telephones;
- 11 c. Whether Plaintiff and the DNC Class member were damaged  
12 thereby, and the extent of damages for such violation; and
- 13 d. Whether Defendant and their agents should be enjoined from  
14 engaging in such conduct in the future.

15 38. As a person that received numerous solicitation calls from Defendant  
16 within a 12-month period, who had not granted Defendant prior express consent  
17 and did not have an established business relationship with Defendant, Plaintiff is  
18 asserting claims that are typical of the DNC Class.

19 39. Common questions of fact and law exist as to all members of The  
20 DNC Class which predominate over any questions affecting only individual  
21 members of The DNC Revocation Class. These common legal and factual  
22 questions, which do not vary between DNC Revocation Class members, and which  
23 may be determined without reference to the individual circumstances of any DNC  
24 Revocation Class members, include, but are not limited to, the following:

- 25 a. Whether, within the four years prior to the filing of this  
26 Complaint, Defendant or its agents placed more than one  
27 solicitation call to the members of the DNC Class whose  
28 telephone numbers were on the National Do-Not-Call Registry

1 and who had revoked any prior express consent and any  
2 established business relationship with Defendant;

3 b. Whether Plaintiff and the DNC Class member were damaged  
4 thereby, and the extent of damages for such violation; and  
5 c. Whether Defendant and their agents should be enjoined from  
6 engaging in such conduct in the future.

7 40. As a person that received numerous solicitation calls from Defendant  
8 within a 12-month period, who, to the extent one existed, had revoked any prior  
9 express consent and any established business relationship with Defendant, Plaintiff  
10 is asserting claims that are typical of the DNC Revocation Class.

11 41. Plaintiff will fairly and adequately protect the interests of the members  
12 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of  
13 class actions.

14 42. A class action is superior to other available methods of fair and  
15 efficient adjudication of this controversy, since individual litigation of the claims  
16 of all Classes members is impracticable. Even if every Classes member could  
17 afford individual litigation, the court system could not. It would be unduly  
18 burdensome to the courts in which individual litigation of numerous issues would  
19 proceed. Individualized litigation would also present the potential for varying,  
20 inconsistent, or contradictory judgments and would magnify the delay and expense  
21 to all parties and to the court system resulting from multiple trials of the same  
22 complex factual issues. By contrast, the conduct of this action as a class action  
23 presents fewer management difficulties, conserves the resources of the parties and  
24 of the court system, and protects the rights of each Classes member.

25 43. The prosecution of separate actions by individual Classes members  
26 would create a risk of adjudications with respect to them that would, as a practical  
27 matter, be dispositive of the interests of the other Classes members not parties to  
28 such adjudications or that would substantially impair or impede the ability of such

1 non-party Class members to protect their interests.

2 44. Defendant have acted or refused to act in respects generally applicable  
3 to The Classes, thereby making appropriate final and injunctive relief with regard  
4 to the members of the Classes as a whole.

5 **FIRST CAUSE OF ACTION**

6 **Negligent Violations of the Telephone Consumer Protection Act**

7 **47 U.S.C. §227(b).**

8 **On Behalf of the ATDS Class and ATDS Revocation Class**

9 45. Plaintiff repeats and incorporates by reference into this cause of action  
10 the allegations set forth above at Paragraphs 1-44.

11 46. The foregoing acts and omissions of Defendant constitute numerous  
12 and multiple negligent violations of the TCPA, including but not limited to each  
13 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular  
14 *47 U.S.C. § 227 (b)(1)(A)*.

15 47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,  
16 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory  
17 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

18 48. Plaintiff and the ATDS Class and ATDS Revocation Class members  
19 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

20 ///

21 **SECOND CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

23 **Act**

24 **47 U.S.C. §227(b)**

25 **On Behalf of the ATDS Class and the ATDS Revocation Class**

26 49. Plaintiff repeats and incorporates by reference into this cause of action  
27 the allegations set forth above at Paragraphs 1-44.

50. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

51. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

52. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

### **THIRD CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227(c)

## **On Behalf of the DNC Class and the DNC Revocation Class**

53. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-44.

54. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

55. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

56. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **FOURTH CAUSE OF ACTION**

1 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

2 **Act**

3 **47 U.S.C. §227 et seq.**

4 **On Behalf of the DNC Class and DNC Revocation Class**

5 57. Plaintiff repeats and incorporates by reference into this cause of action  
6 the allegations set forth above at Paragraphs 1-44.

7 58. The foregoing acts and omissions of Defendant constitute numerous  
8 and multiple knowing and/or willful violations of the TCPA, including but not  
9 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,  
10 in particular *47 U.S.C. § 227 (c)(5)*.

11 59. As a result of Defendant's knowing and/or willful violations of *47*  
12 *U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members  
13 are entitled an award of \$1,500.00 in statutory damages, for each and every  
14 violation, pursuant to *47 U.S.C. § 227(c)(5)*.

15 60. Plaintiff and the DNC Class and DNC Revocation Class members are  
16 also entitled to and seek injunctive relief prohibiting such conduct in the future.

17 **PRAAYER FOR RELIEF**

18 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

19 **FIRST CAUSE OF ACTION**

20 **Negligent Violations of the Telephone Consumer Protection Act**

21 **47 U.S.C. §227(b)**

22 • As a result of Defendant's negligent violations of *47 U.S.C.*  
23 *§227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation  
24 Class members are entitled to and request \$500 in statutory damages,  
25 for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.  
26 • Any and all other relief that the Court deems just and proper.

27 **SECOND CAUSE OF ACTION**

1 **Knowing and/or Willful Violations of the Telephone Consumer Protection  
2 Act**

3 **47 U.S.C. §227(b)**

4 • As a result of Defendant's willful and/or knowing violations of 47  
5 *U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS  
6 Revocation Class members are entitled to and request treble damages,  
7 as provided by statute, up to \$1,500, for each and every violation,  
8 pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.  
9 • Any and all other relief that the Court deems just and proper.

10 **THIRD CAUSE OF ACTION**

11 **Negligent Violations of the Telephone Consumer Protection Act**

12 **47 U.S.C. §227(c)**

13 • As a result of Defendant's negligent violations of *47 U.S.C.*  
14 *§227(c)(5)*, Plaintiff and the DNC Class and DNC Revocation Class  
15 members are entitled to and request \$500 in statutory damages, for  
16 each and every violation, pursuant to *47 U.S.C. 227(c)(5)*.  
17 • Any and all other relief that the Court deems just and proper.

18 **FOURTH CAUSE OF ACTION**

19 **Knowing and/or Willful Violations of the Telephone Consumer Protection  
20 Act**

21 **47 U.S.C. §227(c)**

22 • As a result of Defendant's willful and/or knowing violations of *47*  
23 *U.S.C. §227(c)(5)*, Plaintiff and the DNC Class and DNC Revocation  
24 Class members are entitled to and request treble damages, as provided  
25 by statute, up to \$1,500, for each and every violation, pursuant to *47*  
26 *U.S.C. §227(c)(5)*.  
27 • Any and all other relief that the Court deems just and proper.

**JURY DEMAND**

61. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury on all issues so triable.

Respectfully Submitted this 1st Day of December, 2017.

## LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Cynthia Z. Levin, Esq.

Cynthia Z. Levin, Esq.

## Law Offices of Todd M. Friedman

Attorney for Plaintiff

## CLASS ACTION COMPLAINT